

Court of Appeals, State of Michigan

ORDER

People of MI v Fatia Castleberry

Docket No. 300950

LC No. 09-020308-FC

Brian K. Zahra
Presiding Judge

Michael J. Talbot

Karen M. Fort Hood
Judges

The Court orders that the motion for immediate consideration is GRANTED.

In lieu of granting leave to appeal, pursuant to MCR 7.205(D)(2), the Court further orders that the order of the Wayne County Circuit Court, entered on June 18, 2010, and October 14, 2010, are REVERSED. First, the trial court erred in suppressing defendant's statement at the hospital due to the fact that she was not given *Miranda* warnings. The fact that defendant may have been the focus of the police investigation does not require *Miranda* warnings. *People v Herndon*, 246 Mich App 371, 395; 633 NW2d 376 (2001). Furthermore, the limited record does not support a conclusion that defendant was in custody. *People v Zahn*, 234 Mich App 438, 445-446, 450; 594 NW2d 120 (1999). Defendant was not under arrest, and was not subjected to a restraint of movement associated with a formal arrest at the time she made the statement. *People v Kulpinski*, 243 Mich App 8, 25; 620 NW2d 537 (2000). The trial court also acknowledged that the statement was "blurted out;" thus, the statement is not barred by the Fifth Amendment and is admissible. *People v Anderson*, 209 Mich App 527, 532; 531 NW2d 780 (1995). Second, the trial court also abused its discretion in ruling that the defense can inquire of the prosecution's witnesses at the upcoming trial whether they are aware of violent acts involving Maurice Moore subsequent to the alleged infliction of fatal injuries to defendant's child. Such testimony is barred by MRE 404(b) as propensity evidence. *People v Ortiz*, 249 Mich App 297, 304; 642 NW2d 417 (2001). Although defendant suggest that the evidence corroborates her statement that she believes Moore caused her daughter's death, the conviction is being offered solely to show criminal propensity – because Moore was violent and killed someone in August 2009, he must have acted in conformity with his violent tendencies and caused the head injury which led to the child's death in March 2009.

The motion for stay is DENIED as moot.

Pursuant to MCR 7.215(F)(2), this Court further directs that this order shall take immediate effect. The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

NOV 24 2010

Date

Sandra Schultz Mengel
Chief Clerk